

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 15<sup>th</sup> day of February, two thousand twelve.

PRESENT:

BARRINGTON D. PARKER,  
RICHARD C. WESLEY,  
RAYMOND J. LOHIER, JR.,  
*Circuit Judges.*

FACINET GOULY FOFANA, AKA THIAN  
IBRAHIM,  
*Petitioner,*

v.

11-656-ag  
NAC

ERIC H. HOLDER, JR., UNITED STATES  
ATTORNEY GENERAL,  
*Respondent.*

FOR PETITIONER: Bibiana C. Andrade, New York, N.Y.

FOR RESPONDENT: Tony West, Assistant Attorney  
General; Ada E. Bosque, Senior  
Litigation Counsel, Puneet Cheema,  
Trial Attorney, Office of  
Immigration Litigation, Civil  
Division, United States Department  
of Justice, Washington, D.C.

1           UPON DUE CONSIDERATION of this petition for review of a  
2 Board of Immigration Appeals ("BIA") decision, it is hereby  
3 ORDERED, ADJUDGED, AND DECREED that the petition for review  
4 is DENIED.

5           Petitioner Facinet Gouly Fofana, a native of Mali and  
6 citizen of Guinea, seeks review of a January 24, 2011, order  
7 of the BIA affirming the January 15, 2009, decision of  
8 Immigration Judge ("IJ") Noel Ann Brennan denying his  
9 application for asylum, withholding of removal, and relief  
10 under the Convention Against Torture ("CAT"). *In re Fofana*,  
11 No. A093 408 626 (B.I.A. Jan. 24, 2011), *aff'g* No. A093 408  
12 626 (Immig. Ct. N.Y. City Jan. 15, 2009). We assume the  
13 parties' familiarity with the underlying facts and  
14 procedural history in this case. Under the circumstances of  
15 this case, we have reviewed the IJ's decision as modified by  
16 the BIA's decision. *See Yang v. U.S. Dep't of Justice*, 426  
17 F.3d 520, 522 (2d Cir. 2005).

18           Fofana argues that the IJ's adverse credibility finding  
19 was not supported by the inconsistencies in his testimony.  
20 However, as the BIA found, and as the Government points out,  
21 Fofana's appeal to the BIA did not present any specific  
22 challenges to the IJ's adverse credibility finding.

1 Accordingly, we decline to consider Fofana's challenges to  
2 the adverse credibility finding because he failed to exhaust  
3 the arguments by presenting them to the BIA in the first  
4 instance. See *Zhong v. U.S. Dep't of Justice*, 480 F.3d 104,  
5 122 (2d Cir. 2007) (reaffirming that this Court "may  
6 consider only those issues that formed the basis for [the  
7 BIA's] decision"). Because Fofana's requests for asylum,  
8 withholding of removal, and CAT relief shared the same  
9 factual basis, the agency's finding that his testimony was  
10 not credible supports the agency's denial of all three forms  
11 of relief. See *Paul v. Gonzales*, 444 F.3d 148, 157 (2d Cir.  
12 2006).

13 For the foregoing reasons, the petition for review is  
14 DENIED. As we have completed our review, any stay of  
15 removal that the Court previously granted in this petition  
16 is VACATED, and any pending motion for a stay of removal in  
17 this petition is DISMISSED as moot. Any pending request for  
18 oral argument in this petition is DENIED in accordance with  
19 Federal Rule of Appellate Procedure 34(a)(2), and Second  
20 Circuit Local Rule 34.1(b).

21 FOR THE COURT:  
22 Catherine O'Hagan Wolfe, Clerk  
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